



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department (Board) of Juvenile Justice
VAC Chapter Number:	6 VAC 35-160
Regulation Title:	Regulations Governing Juvenile Record Information And The Virginia Juvenile Justice Information System
Action Title:	Originate
Date:	July 26, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The regulation establishes standards governing the form and content of juvenile record information submitted to the Virginia Juvenile Justice Information System; ensures the integrity of the data; protects the confidentiality of the juvenile record information, and governs the dissemination of information in accordance with law.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The general authority of the Board of Juvenile Justice to promulgate regulations is found in Code of Virginia § 66-10 (6), which provides that the Board shall have the power and duty "[t]o promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department."

Code of Virginia § 16.1-223 (B) leaves no discretion in its requirement that "the State Board of Juvenile Justice shall promulgate regulations governing the security and confidentiality of the data submission [to the Virginia Juvenile Justice Information System]."

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Juvenile records contain a great deal of sensitive information. The information is used by intake officers in making detention decisions; by probation officers in establishing the terms and conditions of probation; by treatment providers in planning their interventions with children who are delinquent or in need of services or supervision; by juvenile residential facility staff in developing individual service plans for juveniles; and by parole officers in planning for a juvenile's return to the community.

This regulation establishes standards for collecting and disseminating juvenile record information, including guidelines for sharing information among agencies in the juvenile justice system. The regulation also establishes standards for the operation and security of an electronic network that will make juvenile record information available to such agencies.

The regulation is essential to ensure that accurate and timely juvenile record information is available to authorized users within Virginia's juvenile justice system. It is also essential to protect the confidentiality of juvenile record information.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

- 6 VAC 35-160-10 defines terms that are used throughout the regulation.
- 6 VAC 35-160-20 defines the scope of the regulation.
- 6 VAC 35-160-30 designates “participating agencies.”
- 6 VAC 35-160-40 requires a signed agreement.
- 6 VAC 35-160-50 governs data submissions.
- 6 VAC 35-160-60 describes access provided to participating agencies.
- 6 VAC 35-160-70 designates individuals authorized to have regular access to juvenile record information.
- 6 VAC 35-160-80 requires the administrator to ensure compliance with regulations.
- 6 VAC 35-160-90 provides for the security of physical records.
- 6 VAC 35-160-100 establishes requirements when records are automated.
- 6 VAC 35-160-110 requires operational programs for computer security.
- 6 VAC 35-160-120 requires procedures to protect security of juvenile record information
- 6 VAC 35-160-130 addresses the security of telecommunications
- 6 VAC 35-160-140 establishes timelines for data submission.
- 6 VAC 35-160-150 provides a process for correcting errors.
- 6 VAC 35-160-160 provides that the existence of records shall not be confirmed or denied.
- 6 VAC 35-160-170 permits information to be disseminated only in accordance with law and regulation.
- 6 VAC 35-160-180 addresses fees.
- 6 VAC 35-160-190 establishes a process for requesting juvenile record information.
- 6 VAC 35-160-200 requires verifications of a requestor's identity.
- 6 VAC 35-160-210 addresses a requestor's eligibility to receive the information.
- 6 VAC 35-160-220 sets standards for responding to requests.
- 6 VAC 35-160-230 establishes that certain information may be withheld from release.
- 6 VAC 35-160-240 requires notice to accompany disseminated juvenile record information.
- 6 VAC 35-160-250 requires that a dissemination log be kept.
- 6 VAC 35-160-260 requires reporting of unauthorized disseminations.
- 6 VAC 35-160-270 addresses interstate dissemination of information.
- 6 VAC 35-160-280 provides a process for individuals to challenge juvenile record information.
- 6 VAC 35-160-290 requires an administrative review of challenge results.
- 6 VAC 35-160-300 provides for removal of a challenge designation.
- 6 VAC 35-160-310 establishes expungement requirements.
- 6 VAC 35-160-320 provides for notification of expungement to participating agencies.
- 6 VAC 35-160-330 establishes procedures for expunging juvenile record information
- 6 VAC 35-160-340 requires confirmation notice of expungement be sent to VJJIS administrator.
- 6 VAC 35-160-350 addresses situations in which an expungement order is received directly by a participating agency.

6 VAC 35-160-360 gives the Department of Juvenile Justice oversight of the VJJIS system and these regulations.

6 VAC 35-160-370 authorizes and requires audits.

6 VAC 35-160-380 provides for administrative sanctions when the regulations are violated.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage to the public in general is that this regulation will facilitate the exchange of juvenile record information among authorized users, supporting the efforts of probation officers, detention homes, juvenile correctional centers, and community service providers to take appropriate action with regard to juveniles who are delinquent or in need of services or supervision.

The primary advantage to individual members of the public is that safeguards are established to protect the confidentiality of the juvenile record information, and for the first time, provision is made for individuals to challenge their records and seek corrections in the records.

There are no known disadvantages to the public.

The primary advantage to the Commonwealth is the establishment of a systematic juvenile record information system, with uniform rules and guidelines. This will enable court service units, community service programs, and residential facilities such as detention homes and juvenile correctional centers to obtain meaningful, timely information on juveniles under their care or supervision.

There are no known disadvantages to the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Absent the proposed regulation, information sharing is nevertheless authorized under Code of Virginia Section 16.1-300 and is currently taking place. There are costs inherent in any sharing of information (for example, personnel, technical infrastructure, telecommunications costs). These costs will not be significantly reduced or increased as a result of the proposed regulation. The regulation will, however, introduce some new mandates that may result in marginal costs to participants in the Virginia Juvenile Justice Information System. For example, 6 VAC 35-160-100 establishes requirements when records are automated, including:

1. a designated system administrator to maintain and control authorized user accounts, system management, and the implementation of security measures;
2. "backup" copies of juvenile record information, preferably off-site.
3. a disaster recovery plan; and
4. a carefully control system specifications and documentation to prevent unauthorized access and dissemination.

While these elements should be a part of any automated system that is currently accessing juvenile record information, the regulation will mandate that these elements be in place. The cost will vary depending on the size of the automated system of the individual program.

Also, 6 VAC 35-160-120 requires procedures to protect security of juvenile record information and to detect unauthorized access or attempted access of juvenile record information, either physically or electronically. Depending on the method chosen by the program to implement this requirement, there may be some cost involved.

Meeting the requirements of 6 VAC 35-160-130 for security of telecommunications may entail some costs, as discussed below.

- A. Ordinarily, dedicated telecommunications lines shall be required for direct or remote access to computer systems containing juvenile record information. However, the Department may permit the use of a nondedicated means of data transmission to access juvenile record information when there are adequate and verifiable safeguards in place to restrict access to juvenile record information to authorized persons.
- B. Where remote access of juvenile record information is permitted, remote access devices must be secure. Remote access devices capable of receiving or transmitting juvenile record information shall be attended during periods of operation. When the remote access device is unattended, the device shall be made inoperable for purposes of accessing juvenile record information.
- C. Telecommunications facilities used in connection with the remote access device shall also be secured. The remote access device shall be identified on a hardware basis to the host computer. In addition, appropriate identification of the remote access device operator shall be required. Equipment associated with the remote access device shall be reasonably protected from possible tampering or tapping.

There may be incidental administrative costs, such as in responding to requests within established timeframes, maintaining a dissemination log, etc. These costs will depend on how many requests each program receives for juvenile record information.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

6 VAC 35-160-10 defines terms that are widely used in establishing, maintaining and destroying juvenile record information, and that are consequently used in this regulation.

6 VAC 35-160-20 establishes that this regulation applies to information, data and records maintained on or derived from the Virginia Juvenile Information System, including originals and copies of manual or automated juvenile record information.

6 VAC 35-160-30 defines participating agencies as including state-operated and locally-operated court services units, and detention homes and boot camps, and provides that any other agency that is eligible to receive juvenile record information under Code of Virginia Section 16.1-300 may apply for status as a participating agency.

6 VAC 35-160-40 requires the Department of Juvenile Justices to develop a written agreement with each participating agency delineating the participating agency's access to and responsibility for information contained in the Virginia Juvenile Justice Information System.

6 VAC 35-160-50 requires that all participating agencies shall submit data and other information as required by Department policy; makes administrators of participating agencies responsible for ensuring the accuracy and timeliness of entries into the juvenile justice information system; and provides that all information entered into the Virginia Juvenile Justice Information System shall become part of a juvenile's record and be subject to the confidentiality provisions of Section 16.1-300 of the Code of Virginia.

6 VAC 35-160-60 establishes that, in providing access to participating agencies, the Department may limit or expand the scope of access granted to participating agencies. Also, service providers' access to juvenile record information shall be limited to that portion of the information that is relevant to the provision of the treatment or service currently be provided, and only upon presentation of the unique identifying number assigned to the juvenile.

6 VAC 35-160-70 requires each participating agency to determine what positions in the agency require regular access to juvenile record information as part of their job responsibilities. The Department may require a background check of any individual who will be given access to the VJJIS system, and may deny access to any person based on such background investigation or for other enumerated reasons. Only authorized employees shall have direct access to juvenile record

information and shall be required to sign an agreement stating that they will use and disseminate the information only in compliance with law and this regulation.

6 VAC 35-160-80 requires the administrator of each participating agency to ensure that employees who have access to juvenile record information are made familiar with the substance of this regulation and are briefed on their responsibility to protect the confidentiality of juvenile record information.

6 VAC 35-160-90 requires each participating agency that possesses physical records or files containing juvenile record information to ensure the physical security of such juvenile record information from unauthorized access, disclosure, dissemination, theft, sabotage, fire, flood, wind or other natural or man-made disasters. Access to areas where juvenile record information is stored shall be limited and controlled.

6 VAC 35-160-100 requires that participating agencies having automated juvenile record information files shall designate a system administrator; maintain "backup" copies of juvenile record information; develop a disaster recovery plan; and control system specifications and documentation to prevent unauthorized access and dissemination.

6 VAC 35-160-110 requires operational programs for computer security. Where juvenile record information is computerized, operational programs will ensure that records can be queried, updated or destroyed only from approved terminals. Computer operations that support juvenile record information shall operate in accordance with procedures developed or approved by the Department. Juvenile record information shall be stored in such a manner that it cannot be modified, destroyed, accessed, changed, purged or overlaid from outside the participating agencies.

6 VAC 35-160-120 requires participating agencies to establish procedures to detect unauthorized access or attempted access of juvenile record information, as well as procedures to be followed when an attempt or unauthorized access is detected.

6 VAC 35-160-130 provides that, to protect the security of telecommunications, dedicated telecommunications lines may be required for direct or remote access to computer systems containing juvenile record information. However, nondedicated means of data transmission may be permitted when there are adequate and verifiable safeguards in place. Where remote access of juvenile record information is permitted, remote access devices and telecommunications facilities used in connection with the remote access device must be secure.

6 VAC 35-160-140 requires that all transactions that are not entered immediately into the juvenile justice information system through on-line submission shall be entered within 24 hours, except for notice of disposition, appeals, and release from direct care.

6 VAC 35-160-150 requires participating agencies to immediately notify the juvenile justice information system administrator when it is found that incorrect information has been entered into the juvenile justice information system.

6 VAC 35-160-160 provides that no participating agency or individual shall confirm or deny the existence or nonexistence of juvenile record information to persons or agencies that would not be eligible to receive the information pursuant to Code of Virginia § 16.1-300.

6 VAC 35-160-170 provides that information may be disseminated only in accordance with law (specifically Code of Virginia §§ 16.1-223 and 16.1-300) and regulation.

6 VAC 35-160-180. provides that participating agencies may charge a reasonable fee for search and copying time expended when an individual or a non-participating agency requests juvenile record information.

6 VAC 35-160-190 requires individuals or non-participating agencies to submit a written request for each record or part thereof to which they request access. This may be done in person, by mail, or by electronic means.

6 VAC 35-160-200 requires a person requesting juvenile record information to present proper evidence of his or her own identity, the identity of the individual whose juvenile record information is requested, and authorization from the individual or the individual's legal representative.

6 VAC 35-160-210 requires the person responding to the request to determine whether the requesting agency or individual is eligible to receive juvenile record information.

6 VAC 35-160-220 provides detailed procedures for responding to requests for juvenile record information, and requires that the requestor be notified of the procedures for reviewing the juvenile record information, the general restrictions on the use of the data, when the record will be available, and any costs that may be involved. Requests from an individual's parent, guardian, legal custodian or other person standing in loco parentis shall be referred to designated personnel of the Department.

6 VAC 35-160-230 provides that any portion of a juvenile's record may be withheld from inspection by a child's parent, guardian, legal custodian or other person standing in loco parentis when the staff of the Department determines, in its discretion, that disclosure of such information would be detrimental to the child, provided that the juvenile and domestic relations district court of the jurisdiction in which the juvenile currently resides shall concur in such determination. The circuit court of the jurisdiction where the child currently resides shall have jurisdiction over petitions filed by a parent, guardian, legal custodian or other person standing in loco parentis for review of the Department's decision to withhold reports or records as provided herein.

6 VAC 35-160-240 requires that the following printed message shall accompany all juvenile record information disseminated outside the Virginia Juvenile Justice Information System: "UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

6 VAC 35-160-250 requires each participating agency to maintain a record of any dissemination for a period of at least three years from the date of the dissemination, and specifies what information must be recorded in the log.

6 VAC 35-160-260 requires participating agencies to notify the department when they observe any violations of the dissemination regulations. The department will investigate and respond to the violation as provided in law and these regulations. A participating agency that knowingly fails to report a violation may be subject to immediate audit of its entire dissemination log and procedures to ensure that disseminations are being appropriately managed.

6 VAC 35-160-270 provides that interstate dissemination of juvenile record information shall be subject to Virginia law and this regulation.

6 VAC 35-160-280 permits individuals or their legal representatives to challenge their own juvenile record information. When a record is challenged, the record shall be flagged with the message "CHALLENGED RECORD." The individual shall be given an opportunity describe how the information contained in the record is alleged to be inaccurate. The VJJIS administrator or designee shall determine if a data entry error was made, and shall contact participating agencies as necessary to make this determination. If a modification of a VJJIS record is required, the VJJIS administrator shall make the required change, and shall send notification of the correction to all recipients of the record within the last 24 months. The individual who initiated the challenge shall be informed of the results of the challenge and the right to request an administrative review and appeal those results.

6 VAC 35-160-290 establishes a process for individuals to request an administrative review of challenge results.

6 VAC 35-160-300 provides that, when juvenile record information is determined to be correct, either as a result of a challenge or an administrative review of the challenge, the VJJIS administrator shall notify the affected participating agencies to remove the challenge designation from their files.

6 VAC 35-160-310 provides that when a court orders the expungement of an individual's juvenile records, all records and identifying information associated with such person shall be destroyed. Non-identifying information may be kept in databases or other aggregated files for statistical purposes.

6 VAC 35-160-320 requires the VJJIS administrator to notify all participating agencies to purge their records of any reference to the person whose record has been ordered expunged.

6 VAC 35-160-330 requires that paper versions of records that have been ordered expunged shall be destroyed by shredding, incinerating, pulping or otherwise totally eradicating the record. Computerized versions of records that have been ordered expunged shall be deleted from all databases and electronic files in such a way that the records cannot be accessed or recreated through ordinary use of any equipment or software that is part of the Virginia Juvenile Justice Information System. If identifying information concerning the subject individual is included in

records that are not ordered expunged, the identifying information relating to the individual shall be obliterated on the original or a new document shall be created eliminating the identifying references to the individual.

6 VAC 35-160-340 requires confirmation notice to the VJJIS administrator that records have been expunged. The notification shall indicate that juvenile records were expunged in accordance with court order and shall not identify the juvenile whose records were expunged.

6 VAC 35-160-350 provides that when a participating agency receives an expungement order directly from a court, the participating agency shall promptly comply with the expungement order and shall notify the VJJIS administrator of the court-ordered expungement. The VJJIS administrator shall obtain a copy of the order from the appropriate court.

6 VAC 35-160-360 provides that the Department of Juvenile Justice shall monitor compliance with this regulation and shall take enforcement action as provided in this regulation or by law. The Department shall have the right to audit, monitor, and inspect any facilities, equipment, software, systems or procedures established pursuant to this regulation.

6 VAC 35-160-370 requires the Department to annually conduct an audit of a random representative sample of participating agencies to ensure and verify adherence to these regulations and to ensure that juvenile record information records are accurate and complete. In addition to random audits, the Department may conduct audits at any time for cause, including but not limited to occasions when erroneous record information has been identified through a challenge to any person's juvenile record information.

6 VAC 35-160-380 authorizes the Department to impose administrative sanctions including temporary or permanent suspension of an individual's authorization to access the Virginia Juvenile Justice Information System; temporary or permanent suspension of an entity's designation as a "participating agency;" or temporary or permanent suspension of a participating agency's authorization to access any sub-system of the Virginia Juvenile Justice Information System.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Board is mandated by law to issue regulations governing the Virginia Juvenile Justice Information System. Although the Department could establish policies and procedures governing the security and dissemination of juvenile record information, this is not an acceptable alternative to promulgation of a regulation pursuant to the Administrative Process Act.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

Staff of the Executive Secretary of the Supreme Court of Virginia suggested that the regulation be clear that no court is a “participating agency” even though the court service unit might be. The suggestion has been incorporated into the draft regulation.

Participants in an ad hoc work group convened by the Department of Criminal Justice Services examining issues of confidentiality and record sharing indicated that the provisions explaining how to challenge and correct records will be very helpful. It would also be possible to have a provision allowing individuals to file a brief statement if they disagree with the information contained in the record. This suggestion has been incorporated into the draft regulation.

Participants in an ad hoc work group convened by the Department of Criminal Justice Services examining issues of confidentiality and record sharing also asked whether it is always the case that if an individual or agency has a right to see some information in the record, it has the right to see the entire record, and suggesting that with many types of records it is necessary to define the scope of access. The draft regulation clarifies that service providers can have access only to that part of the juvenile record that is directly related to their current provision of services. Also, certain information may be withheld, subject to review by a court, from parents requesting access to their children’s juvenile record information.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The regulation was drafted in consideration of existing Virginia regulations governing criminal record information promulgated by the Department of Criminal Justice Services. Where those regulations seemed clearly written and easily understandable, they served as a model for this regulation. The elements of the regulation were circulated to interested parties including a work group examining statutes that govern confidentiality of juvenile records. Comments received from interested parties support the conclusion that the regulation is clearly written.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department anticipates conducting a periodic review of the regulation no later than October, 2005. At that time, the agency will assess whether the regulation has facilitated or impeded legitimate information sharing among participating agencies; whether the information in the Virginia Juvenile Justice Information system is accurate and has been entered in a timely fashion; and whether the provisions for challenge and correction of information appear to be adequate.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulation recognizes the rights of parents, guardians and other persons standing in loco parentis to access juvenile record information concerning their children. (There are specific provisions, grounded in law, for withholding certain information from parents when disclosure might be detrimental to the child. See Code of Virginia § 16.1-300.B.)

Otherwise, the regulation neither encourages nor discourages economic self-sufficiency, self-pride, or the assumption of responsibility for oneself, one's spouse, or one's children or elderly parents. The regulation neither strengthens nor erodes the marital commitment, and neither increases nor decreases disposable family income.